IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8709 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVAM SYNTHETICS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 8709 of 2002

MS SUDHA R GANGWAR for Petitioner No. 1

MS LILU K BHAYA for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 04/04/2003

ORAL JUDGEMENT

#. This petition is pending since the issuance of notice

to the respondent as per order dated 30th August, 2002 and while issuing notice, the court has granted interim stay against the disconnection of the electric supply of the petitioner's unit on condition that the petitioner shall deposit 15% of the electric bill with the respondent Board on or before 30th September, 2002. In response to the notice issued to the respondent, Ms. Bhaya, learned advocate appeared for the respondent and filed affidavit in reply of Shri Hasmukhbhai Modi, Deputy Engineer of GEB, office at Ankleshwar dated 19.1.2003 in detail, opposing the petition filed by the petitioner. I have heard the counsel for the parties at length. To decide the petition finally, with the consent of counsel appearing in the matter, Rule is issued and Ms. Bhaya, learned advocate waives service of Rule on behalf of the respondent and by consent of the counsel appearing in the matter, Rule is fixed forthwith.

#. Ms. Aacharna Singh, learned advocate appearing for the petitioner has taken me through the petition and the documents attached thereto including the order under challenge passed by the Appellate Committee of the respondent - Gujarat Electricity Board (hereinafter referred to as the 'Appellate Committee of the Board' dated 20th July, 2002. In this petition, the petitioner has prayed for quashing and setting aside the judgement and order passed by the Appellate Committee of the respondent Board so far as the same is against the petitioner and also the impugned bill, which is at Annexure - B and alternatively, the petitioner has prayed that the respondent Committee be directed to hear the petitioner afresh and to consider all the points raised by the petitioner in respect of issuance of bill within stipulated period and by way of interim relief, the petitioner has prayed that the respondent, their agent, servant not to disconnect the power supply of the petitioner unit. The petition is supported with an affidavit of Shri Ramsagar Yadav on behalf of the petitioner dated 9th August, 2002.

#. As found from the petition, the petitioner is a partnership firm duly constituted under the Indian Partnership Act and all partners of the petitioner firm are nationals and citizens of India. The petitioner is a consumer of respondent Board and it's consumer No. is 08904/00235/4 with contract load of 90 H.P. The checking squad of the respondent Board visited the electrical installation of the petitioner on 12th August, 2000 and as per the inspection, it was found that the meter was found running slow by 41.80% and insulation of R&Y phase at the connection of PT were found burnt. The checking

sheet was prepared. The meter installed at the petitioner unit was removed and was sent to laboratory for testing. The respondent Board has issued bill for sum of Rs.5,80,475=00, It is the case of the petitioner that petitioner has deposited 15% of the amount of the bill and power connection was restored.

#. Being aggrieved by the impugned bill, the petitioner preferred an appeal before the Appellate Committee of the Board being Appeal No. B-85/2002. It is the case of the petitioner that hearing of the appeal was fixed by the Appellate Committee on 20th July, 2002 as per the intimation received by the petitioner but due to personal reason, it was not possible to remain present by the concerned person of the petitioner on 20th July, 2002 and on 18th July, 2002, the petitioner had informed the respondent and requested the authority to give another date. The petitioner has also annexed the said communication issued by the petitioner to the respondent namely to the Chief Engineer, Appellate, GEB, Baroda dated 18th July, 2002 at Annexure - C to this petition. It is averred by the petitioner that in view of the request made by the petitioner for adjournment of hearing to the respondent, the petitioner expected that the hearing of the appeal before the Appellate Committee will be adjourned. However, the Appellate Committee had proceeded with the hearing of the said appeal and decided the appeal of the petitioner ex-parte by allowing the appeal partly on 20th July, 2002. It is this order, which is against the petitioner, is challenged in this petition on the ground that the appellate Committee had ex-parte decided the appeal, though, request for adjournment was submitted and received by the appellate authority as per communication from the petitioner to the respondent dated 18th July, 2002. In this petition, it is the contention of the petitioner that as the hearing of the appeal was ex-parte, the appellate authority has not considered certain material and the appeal was partly allowed, with the result, the bill for sum of Rs.5,80,475=00 issued by the respondent to the petitioner has resulted into miscarriage of justice, as it is the case of the petitioner that the petitioner has not committed any theft of the electric power and pursuance of the said order, bill issued by the respondent is illegal, arbitrary and unjust. It is the contention of the petitioner that when there is a slow running of the meter, the Appellate Committee has no power to decide the same and ought to have referred the matter to electrical Engineer.

#. Ms. Bhaya, learned advocate appearing for the

respondent has vehemently urged that no case is made out by the petitioner and the same is deserved to be dismissed. She has also taken me through the affidavit filed by Hasmukh Modi filed on behalf of the respondent dealing with the case put forward by the petitioner and it is her submission that reading the order passed by the Appellate Committee, it clearly shows that full opportunity was given to the petitioner while considering the appeal filed by the petitioner. As found from the reply affidavit filed by Shri Modi that date of hearing was previously informed to the petitioner on 27th May, 2002 when the hearing of the appeal was kept by the Appellate Committee on 30th May, 2002 and considering the request made on behalf of the petitioner, the adjournment was granted and the matter was placed on 27th June, 2002, for which, the intimation was also given by issuing notice, which was served on the petitioner on 13th June, 2002. This notice was served on the petitioner personally by hand delivery. Even on the second date of hearing, the petitioner did not remain present and the matter was adjourned to 20th July, 2002 and the notice for hearing was personally served on the petitioner by hand delivery on 17th July, 2002 and inspite of that, no one remained present on the date of hearing of the appeal on 20th July, 2002. That was the third adjournment and final date of hearing was intimated to the petitioner and since there was no request and the third notice regarding final hearing was served to the petitioner, the matter was decided ex-parte. Shri Modi has also filed detailed reply denying the contentions raised by the petitioner in the petition and it is the case of the respondent that petition deserves to be dismissed as no case is made out by the petitioner and the order passed by the appellate Committee be confirmed.

#. In light of the submissions made before me and as found from the order of issuance of notice dated 30.8.2002, the court has passed the following order :-

> "Ms. Sudha Gangwar, Ld. advocate for the petitioner states that the appeal is decided without giving opportunity to the petitioner since the petitioner for the reasons beyond their control could not remain present. She further states that the petitioner is ready to deposit the amount of 15% of the bill if the matter is reheard by the appellate committee. The petitioner will also ready to pay the costs of this litigation to the Gujarat Electricity Board.

In view of the above, notice returnable on 27.9.2002. Interim stay against disconnection on condition that the petitioner deposits 15% of the electricity bill with the respondent Board on or before 13.9.2002 and if the amount is not deposited before the said date the respondent Board to disconnect the electricity supply.

DS permitted."

#. Ms. Singh, learned advocate appearing of the petitioner has produced for my perusal the receipt issued by the GEB dated 12.9.2002, under which, the petitioner has deposited an amount of Rs.44,000=00 before the Board. Even Ms. Bhaya, learned advocate appearing for the respondent has not disputed with such deposit made in pursuance to the order passed by this Court, by the petitioner with the Board.

#. As found from the affidavit-in-reply filed by Shri Modi, it is admitted by Shri Modi that the Appellate Committee has decided the matter ex-parte. However, it is his case that previously considering the request made by the petitioner, the matter was adjourned and due notice for hearing of the appeal was served on the petitioner. However, it is the case of the petitioner that in response to the notice of hearing of the appeal, which was fixed on 20th July, 2002, it was received by the petitioner on 18th July, 2002 and on the very day, the petitioner has communicated to the respondent authority namely Chief Engineer, Appellate, GEB, Baroda by informing that due to personal reason, it will not be possible for him to attend the matter, which is fixed on 20th July, 2002 and the request was made to give next date of hearing to enable the appellant to attend the hearing before the Appellate Committee. In reply affidavit filed by Shri Modi, there is no whisper about the letter, which was issued by the petitioner to the respondent on 18th July, 2002, requesting the Appellate Committee for adjournment and to keep the matter on next date and further no intimation from the respondent to the petitioner was given to the petitioner in respect of the letter issued by the petitioner on 18th July, 2002. The petitioner is expected that once he has already issued letter, requesting the appellate Committee to give another date, he is suppose to wait for the reply and he is not suppose to attend the hearing, which was fixed on 20th July, 2002. On reading the order passed by the

Appellate Committee dated 20th July, 2002, it clearly indicates that the Appellate Committee has proceeded with the hearing of the appeal in absence of the appellant and decided the appeal on the basis of the record and the appeal was partly allowed with the result, the revised supplementary bill was issued.

#. In my view, as there is no reply to the affidavit filed about the averments made by the petitioner in respect of the letter issued by the petitioner to the Chief Engineer, Appellate, GEB, Baroda dated 18th July, 2002 and even in the affidavit of Shri Modi, he has in term admitted that the Appellate Committee has proceeded and decided the appeal ex-parte, in my view, petition deserves to be allowed only on this ground that the Appellate Committee has without affording an opportunity of hearing to the petitioner, though request was made by the petitioner appellant for adjournment of the hearing of the appeal, which was fixed on 20th July, 2002, has decided the appeal ex-parte and the matter deserves to be remanded back to the Appellate Committee with a direction that the appeal filed by the appellant be heard on merits and decide in accordance with law by giving opportunity to the petitioner. Ms. Aacharna Singh has stated before me that the petitioner will not seek any adjournment and the Appellate Committee will proceed with the hearing with the said appeal. Accordingly, rule is made absolute in above terms. In view of the statement made by Ms. Gangwar, learned advocate on behalf of the petitioner, which I have referred above, the petitioner to pay costs of Rs.500=00 to the respondent. The petitioner is accordingly directed to deposit the said amount of costs with the Registry of this Court within two weeks from today. Liberty is granted to the respondent to withdraw the said amount by way of costs. As the appeal of the petitioner is of year 2002, it is desirable that the Appellate Committee shall decide the same in accordance with law as expeditiously as possible, however, not later than 31st May, 2003.

(D.K.Trivedi,J.)
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